

October 27, 2021

VIA ECF

The Honorable Andrew L. Carter, Jr.
United States District Court Judge
Southern District of New York
Thurgood Marshall United States Courthouse
40 Foley Square
New York, New York 10007

Re: *SEC v. Gerald Fauth*, No. 21-mc-787 (ALC)

Dear Judge Carter:

We bring this letter motion on behalf of Respondent Gerald Fauth in the above-referenced action to respectfully request permission to file Mr. Fauth's Response to the Securities and Exchange Commission's ("SEC" or "Applicant") Application and Order to Show Cause ("Response") in redacted form on the public docket with an unredacted copy filed under seal. We also request permission to file the Declaration of Dr. Albert Herrera ("Herrera Declaration"), along with the Declaration of F. Joseph Warin ("Warin Declaration") and certain associated exhibits, under seal in whole or in part as described in Section I, below. The Court previously granted Applicant's earlier application to seal similar information contained in the Application and corresponding papers. *See* Dkt. No. 1.

While there is a presumption of public access to judicial documents, courts have "considerable discretion in determining whether good cause exists to overcome the presumption of open access to documents." *Geller v. Branich Int'l Realty Corp.*, 212 F.3d 734, 738 (2d Cir. 2000). In doing so, courts must balance "the competing interests of public access against the privacy interests of the parties," among other factors. *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 119 (2d Cir. 2006); *see also* Fed. R. Civ. P. 26. Where the presumption of public access is outweighed by such factors, courts routinely grant requests to seal. *Lugosch*, 435 F.3d at 119.

Here, this balancing test weighs in favor of sealing the confidential portions of the Response and associated declarations and exhibits as the proposed redactions consist of Mr. Fauth's sensitive medical information. "Medical information is among the types of information often made subject to a sealing order." *McGuirk v. Swiss Re Fin. Servs. Co.*, 2015 WL 1366186, at *1 (S.D.N.Y. Mar. 30, 2015); *see also* Health Insurance Portability and Accountability Act, Pub. L. 104-191.

I. Specific Documents to Be Sealed

Mr. Fauth seeks to seal the following documents that sensitive medical information:

- Herrera Declaration: Mr. Fauth seeks to seal the Herrera Declaration in its entirety, as it describes Mr. Fauth's medical condition in detail.
- Exhibit 1 to the Herrera Declaration: Mr. Fauth seeks to seal Exhibit 1 to the Herrera Declaration in its entirety, as it describes Mr. Fauth's medical condition in detail.

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- Warin Declaration: Mr. Fauth seeks to seal limited portions of the Warin Declaration as they relate to descriptions of Mr. Fauth's medical condition.
- Exhibit 2 to the Warin Declaration: Mr. Fauth seeks to seal Exhibit 2 to the Warin Declaration in its entirety, as it describes Mr. Fauth's medical condition in detail.
- Exhibit 3 to the Warin Declaration: Mr. Fauth seeks to seal Exhibit 3 to the Warin Declaration in its entirety, as it describes Mr. Fauth's medical condition in detail.
- Exhibit 4 to the Warin Declaration: Mr. Fauth seeks to seal Exhibit 4 to the Warin Declaration in its entirety, as it describes Mr. Fauth's medical condition in detail.
- Exhibit 8 to the Warin Declaration: Mr. Fauth seeks to seal Exhibit 8 to the Warin Declaration in its entirety, as it describes Mr. Fauth's medical condition in detail.
- Portions of Mr. Fauth's Response to the Application quoting or summarizing the above materials, as they describe Mr. Fauth's medical condition in detail.

Accordingly, the Court should grant Mr. Fauth's motion to allow it to redact that information from the public record or otherwise file the specified documents under seal.

In accordance with the Court's Individual Practices, Respondent will concurrently file public versions of certain of the above-referenced documents with the proposed redactions, and file under seal a copy of the documents with the proposed redactions highlighted.

We are available at the Court's convenience should it have any questions or concerns.

Respectfully submitted,

/s/ F. Joseph Warin

F. Joseph Warin

cc: All counsel (via ECF)